governance of conduct as where it is directed toward that other's person or property. The result attained in the present case is, therefore, entirely satisfactory. But the court draws a very fine and highly technical distinction between this case and one of negligent misrepresentation, thereby avoiding serious obstacles in the path of a recovery. *Cf. Le Lievre* v. *Gould*, [1893] 1 Q. B. 491. See 7 HARV. L. REV. 124. Emphasis is placed on the negligent performance of a physical service or act as the basis of liability. But recovery should not be denied simply because this physical act is missing and there is substituted a mental service or act negligently performed which similarly finds its culmination in the words of a certificate or prospectus. *Cf. Reno* v. *Bull*, 226 N. Y. 546, 124 N. E. 144. See 14 HARV. L. REV. 66. If, in the future, the cause of action in the latter case is based on the negligence of the defendant and not on deceit, it seems that the plaintiff should recover on the principles of the present case.

UNFAIR COMPETITION — MEASURE OF DAMAGES — GOODWILL IN TITLE OF PLAY. — The plaintiff translated and copyrighted Benavente's play, "La Malquerida" (The Ill-beloved), gave it the title, "The Passion Flower," and contracted with the defendant H for production of the play on a royalty basis. Meanwhile, Benavente sold his motion-picture rights to G. After the plaintiff's play was an established success, H bought these rights from G for $2,000 and sold them under the plaintiff's title, "The Passion Flower," to S for $25,000. Under this title the moving pictures were produced in competition with the plaintiff's play and without his consent. The plaintiff seeks to enjoin production of the moving pictures and asks for damages. *Held*, that production under the plaintiff's title be enjoined and that the plaintiff have an accounting of the profits of H and S and recover damages. *Underhill* v. *Schenck*, 193 N. Y. Supp. 745 (App. Div.).

Unfair competition is often treated as a tort for which the plaintiff should be compensated. See *Sharpless* v. *Lawrence*, 213 Fed. 423, 426 (3rd. Circ.); *Prest-O-Lite Co.* v. *Bournonville*, 260 Fed. 442, 443, 444 (D. N. J.); *G. & C. Merriam Co.* v. *Saalfield*, 198 Fed. 369, 376 (6th Circ.). The defendants' profits are so far in excess of the plaintiff's loss here that on such a theory the case would be wrong. It is, however, fundamental that one is liable for any proceeds obtained by the wrongful use of another's property. *Newton* v. *Porter*, 69 N. Y. 133. It is on this basis that equity, when enjoining the infringement of patents or trade-marks, makes the defendant disgorge his profits. *Tilghman* v. *Proctor*, 125 U. S. 136; *Prest-O-Lite* v. *Bournonville*, *supra*; *Benkert* v. *Feder*, 34 Fed. 534. (Circ. Ct., N. D. Cal.) Goodwill is also a form of property. See ROGERS, GOOD WILL, TRADE-MARKS, AND UNFAIR TRADING, 127; NIMS, THE LAW OF UNFAIR BUSINESS COMPETITION, 1 ed., 21. The defendant in the principal case wilfully appropriated the goodwill of the plaintiff. Though the courts do not generally recognize unfair competition as an appropriation of property, they reach the same result where the wrong was wilful by imposing punitive damages on the defendant to the extent of his profits. See *Sharpless* v. *Lawrence*, *supra*; *Dickey* v. *Metro Pictures Corp.*, 164 N. Y. Supp. 788 (Sup. Ct.). See 29 HARV. L. REV. 763, 765. They then justify their result by arguing that it is impossible to determine what portion of the defendant's profits were taken from the plaintiff, and that any other rule leaves the innocent plaintiff unprotected. See *Hamilton-Brown Shoe Co.* v. *Wolf Bros. Co.*, 240 U. S. 251, 261; *Graham* v. *Plate*, 40 Cal. 593, 598. The result is unobjectionable but the reasoning is unfortunate.